



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.806 of 2013

and

M.P. (MD) No.1 of 2013

K.Maalai

... Petitioner

Vs

1.The Government of Tamilnadu
represented by its Secretary,
Municipal Administration and Water
Supply Department,
Fort Saint Geore, Chennai.

2.The District Collector,
Thoothukudi District.

3.The Executive Officer,
Town Panchayat,
Srivaikuntam, Thoothukudi- 628 601.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the impugned order in Na.Ka.No.150/2010 dated 27.08.2010 on the file of the third respondent and quash the same and further directing the third respondent to 5% Special pay recovered by the third respondent for the period 01.09.1998 to 31.12.2006 and further revising the salary of the petitioner by considering the 5% Special pay and to pay the arrears accrued and further directing the third respondent to pay the interest on the Provident Fund disbursed to the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 and R2 : Mr.D.Muruganantham
Additional Government Pleader

For R3 : Mr.T.S.Mohammed Mohideed

ORDER

The order impugned dated 27.08.2010 states that 5% Special Pay was granted excessively to the writ petitioner and therefore, the writ petitioner is liable to repay the excess amount of Rs.26,561/- in lumpsum. Challenging the said order, the present writ petition is filed.



2.The writ petitioner was appointed as Sanitary Supervisor in Srivaikundam Town Panchayat and retired from service on 31.08.2010, on attaining the age of superannuation. The petitioner was granted with the benefit of 5% Special Pay as per the Government orders in rectification of the pay anomaly. The 5% Special Pay was granted in accordance with the government orders and therefore, there was no infirmity in respect of grant of 5% Special Pay to the writ petitioner.

3.However, on the ground of the audit objection, the impugned order of recovery has been issued. The petitioner states that the impugned order of recovery has been issued without any valid reason and more specifically, at the time of the retirement of the writ petitioner.

4.This Court is of the considered opinion that the writ petitioner was serving in Group-3 service and even in case of any excess payment, the same cannot be recovered after a lapse of many years and the authorities competent are empowered to rectify the error occurred in the pay fixation, in order to pay the correct pay to the employee in accordance with the rules. Thus, the excess payment already made cannot be recovered in view of the legal principles settled by the Hon'ble Supreme Court of in the case of **State of Punjab v. Rafiq Masih** reported in (2015) 4 Supreme Court Cases 334 and the relevant paragraphs are extracted hereunder :

"18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii)Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv)Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be unjust, oppressive or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."



5.The writ petitioner was serving as Group-3 employee and the 5% Special Pay was granted at the instance of the establishment and there was no misrepresentation or otherwise on the part of the writ petitioner. Thus, the recovery cannot be imposed after a lapse of many years and the authorities competent are empowered to rectify the mistakes in the fixation of successive pay.

6.In this view of the matter, the impugned order passed by the third respondent in proceedings in Na.Ka.No.150/2010 dated 27.08.2010 is quashed. The respondents are directed to correct the scale of pay as applicable to the writ petitioner, with reference to the pay Rules in force by offering opportunity to the writ petitioner. However, the excess payment already paid cannot be recovered and if at all any amount had already been recovered, the same is directed to be reimbursed within a period of 12 weeks from the date of receipt of a copy of this order.

7.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary, Government of Tamilnadu,
Municipal Administration and Water
Supply Department,
Fort Saint Geore, Chennai.

2.The District Collector,
Thoothukudi District.

+1CC TO MR.G.PRABHU RAJADURAI, Advocate Sr. No.66864
+1CC TO MR.T.S.MOHAMED MOHIDHEEN, Advocate Sr. No.66699
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.66927

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